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SUBJECT: ELECTION PROCEDURES FOR GEORGIA'S JANUARY 5, 2007
PRESIDENTIAL ELECTION

11. (U) SUMMARY: On November 8, President Saakashvili announced snap Presidential elections and a plebiscite to ask voters for their views on the timing of Parliamentary elections. This cable reviews the requirements for presidential candidates, election and plebiscite procedures, and proposed changes to the legislation affecting the Central, District, and Precinct Electoral Commissions. End Summary.

Who is Eligible and Filing Requirements

12. (U) Article 76 of the Constitution allows for presidential elections if the President is unable to discharge his or her authority or his or her term of office terminates early. The Chair of the Parliament assumes the duties of the President in such a case. A presidential election must take place within 45 days of the termination of the President's term in office, in the case of a resignation or other early termination. President Saakashvili has announced elections for January 5, and we understand he intends to resign and transfer power to Nino Burjanadze, the Speaker of Parliament, on Sunday, November 25. The Parliament has the responsibility to organize the elections, in cooperation with the Central Election Commission (CEC). Officially, the date of the elections is set by Parliament as well, but it is expected the Parliament, controlled by the President's National Movement supporters, will ratify President Saakashvili's decision to hold the elections on January 5.

13. (U) Article 70 of the Georgian Constitution and Article 80 of the Election Code state that any person may be elected President of Georgia if he or she is a native-born citizen of Georgia, has the right to vote, has attained the age of 35 years, has lived in Georgia for 15 years, and is living in Georgia on the day on which the election is scheduled. Any person who is convicted by a court and serving a sentence of imprisonment cannot participate in any election. However, if a person is a suspect, being prosecuted, in pre-trial detention or even sentenced but not imprisoned, he or she may still register as a Presidential candidate and run for the Presidency. With more than one potential presidential candidate, including Badri Patarkatsishvili, subject to criminal prosecution for their role in the November 7 unrest, the fact that persons under indictment can run and be elected is significant. Once elected, the President enjoys personal immunity (Constitution, Article 75). President Saakashvili has pledged that such candidates will not be hindered from running by the government. Irakli Okruashvili is less than 35 years old and is not eligible for the presidency.

14. (U) Article 81 states a political party or a 5-person

group of voters has the right to nominate a candidate for election as the President of Georgia. The nomination of a candidate for election as the President of Georgia must be confirmed by the signatures of no less than 50,000 voters. Article 84 of the Election Code states that a candidate for the Presidency of Georgia undergoes registration by ordinance of the CEC chairman, no later than the 30th day prior to election day. In an extraordinary presidential election, such as is about to occur, the party or voters' group must submit its candidate's nomination to the CEC no later than 40 days before the election. The list of 50,000 supporters must be submitted at least 30 days before the election date. The CEC must make its decision to register the candidate, or not, at least 25 days before the election.

Election Campaigning

15. (U) Article 73 of the Georgian Election Code states that election campaigning may begin at the time of the announcement of the elections. Candidates enjoy equal rights as of the day of the announcement. Article 74 states that it is prohibited to forbid rallies and manifestations, except for cases when there are slogans calling for violation of human rights and liberties, the country's independence or territorial integrity, for instigation of national, ethnic, provincial, religious, and social strife, for overthrow of the constitutional system and replacing it by violence, and for propagation of war and violence. Local governments are responsible to ensure the safety of meetings, rallies and other such campaign events.

16. (U) Article 85 of the Election code states that as of the moment of registration at the CEC, candidates for the Presidency of Georgia may take part in the election campaign

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on a basis of equality. They enjoy equal rights to use of the press and other mass media on all the territory of Georgia. A candidate shall not be detained, arrested or searched before the official publication of the final election results by the CEC, unless a request from the General Prosecutor of Georgia is agreed to by the CEC. The CEC can order the release of a detained candidate.

Election Results and Second Round Specifications

17. (U) Article 86 states that a candidate who receives more than half the votes of those voters taking part in the elections on the first round is considered elected. No level of voter turnout for the first round is specified. If no candidate receives more than half the votes, then a second round of elections takes place. The second round is to take place two weeks after the general election (first round). The two candidates who have the best results in the first round have the right to take part in the second round of elections. At least one-third of the total number of registered voters must take part in the second round for the winner to be elected. The candidate who receives the most votes, but no less than one-fifth of the total number of the voters, is considered elected. If no one is elected in the second round, the Election code has provisions for by-elections to be held within 2 months of the first round.

Inauguration Ceremony

18. (U) According to Article 71 of the Constitution, before taking office, the new President must take an oath and make an address. The ceremony is to take place on the third Sunday after the day of the election of the President. In the present case, if the President is elected in the first

round on January 5, the inauguration would be on January 20, 2008.

Proposed Changes to the Election Code

19. (U) The Parliament's Legal Issues Committee has made the following proposals for changes to the election code, which were approved at a first hearing on November 15. The proposed changes will most likely receive a second hearing on Tuesday, November 20. All changes must be in force no later than November 26 to comply with mandatory time constraints prior to the elections.

- The one-third turnout threshold and one-fifth vote threshold currently required to declare a winner in the second round of a presidential election would be abolished.
- In the case of a tie for second place in the first round, the second place candidate who registered his or her candidacy first would advance to the second round of voting, along with the first place candidate.
- The number of CEC members would be increased from 7 to 13 (including the chair). Six CEC positions (including the chair) would be filled by Parliament based on the President's nomination. Seven CEC positions would be filled by parties funded by the state budget. Currently, the parties that meet this condition are the United National Movement, New Rightists, Industrialists, Republican Party, Conservative Party, Labor Party and Freedom Party.
- The term of the CEC chair and members would be reduced from 6 to 5 years, although they would be allowed to be re-elected.
- Termination of the authority of the CEC chair would automatically terminate the authority of the other 12 CEC members.
- The number of seats on the Precinct Election Commissions (PEC) would increase from 9 to 13.
- PEC's would be composed of four members nominated by the District Election Commission and nine members nominated by the three political parties gaining the most votes in the last local election (three members from each party). The three parties that currently meet this condition are the United National Movement, New Rightists and Industrialists, which would thus each appoint three members to each PEC nationwide.

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- The number of voters in each PEC would be reduced from 2000 to 1500.
- Polling locations would be posted in public buildings in lieu of the current practice of mailing voter identification cards.
- Invalid ballots would be counted in calculating voter turnout.
- Court fees for filing election-related complaints would be abolished.
- Registration of parties and candidates would become the responsibility of the whole CEC rather than just the chair.
- Election campaigning inside the polling station would be prohibited on election day.
- TV campaign commercials would be prohibited on Election Day.
- The Adjara CEC equivalent would be abolished.

- Media monitoring would take place.
- International election observers would have no restrictions on their observation activities.
- Election information will be published in several minority languages.

 Amendments to the Law on Referendum

- The fifty percent voter turnout threshold currently required for a referendum or plebiscite to be valid would be abolished.
- The required opening times of the polls for a referendum or plebiscite would be changed to 0800-2000 from the current timeframe of 0700-2000.

 Referendum vs. Plebiscite

¶10. (U) Georgian legislation recognizes two forms of national polling -- referendum and plebiscite. The one difference is that the result of a referendum is legally binding, while the outcome of a plebiscite is only a recommendation. In the case of the date of parliamentary elections, the government chose to hold a plebiscite, because the Constitution states that a referendum cannot "adopt or invalidate a law". Therefore, the form of a plebiscite was chosen because the date of the parliamentary elections was set by the Constitution.

¶11. (U) A draft law reflecting the outcome of a plebiscite must be submitted for approval to the Parliament by the President. A plebiscite must be published one month prior to discussion of it in the Parliament to ensure nation-wide debate. Therefore, upon completion of the one-month period from the publication of the amendments to the Constitution, the parliament will deliberate the issue. The amendment has to pass three hearings and in order to be adopted must receive 2/3 of votes of the Parliament membership.

 Where the Rub Is

¶12. (U) The opposition, by and large, criticizes the current composition of the CEC, District Electoral Commissions, (DEC) and Precinct Electoral Commissions (PEC), lowering of the number of PEC's from 2000 to 1500 and doing away with voter invitation cards, the government's manner of changing the majoritarian system, and not permitting voters same day registration.

- Changing the number of CEC members from 7 to 13. Opposition members (Republicans and Conservatives) claim the ruling party will have an advantage because the Parliament-appointed CEC members and the chairman would all be National Movement nominees, even if they are not party affiliated. Adding the National Movement appointee gives the government control of seven members. Therefore, the opposition is demanding "equal" representation in the CEC. According to Dato Usupashvili, Republican leader, both the

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government and the opposition parties should have six members for each side. Usupashvili also demands current CEC chairman Tarkhnishvili be dismissed and a new chairman elected.

- Composition of the DEC's and PEC's. The question remains unclear as to opposition representation at the lower levels

of DEC's and PEC's. Currently, DEC's are composed of five professionally qualified members, all of whom are selected by the CEC on the basis of a competition. Political parties are not represented. During the first hearing no changes were introduced to this provision. Currently, PEC's consist of 9 members, of whom three are selected by the CEC and six by three parties -- the National Movement, the Block of New Rightists/Industrialists, and the Labor party (two persons per party.) The draft law only increases the number of commissioners, allotting four members to the CEC and three members to each of the above parties. The opposition claims that other parties should be represented at the PEC level. According to Usupashvili, the ruling party is considering following the CEC model for PEC's, but he objects to this because of the lack of parity.

- Limiting PEC's/Abolishing Voter Invitation Cards. The opposition believes that both of these measures will offer unwarranted opportunities for manipulation by the ruling party.

- Changes in the Majoritarian System for Election of Half the Parliament. The National Movement supports revocation of the winner-take-all principle and supports introduction of a proportional representation principle, which is based on the party lists of candidates presented in 19 multi-seat constituencies throughout Georgia. This proposal, though generally supported by the opposition, is not likely to be effective until after the Presidential elections.

- Same day registration at the polls. The United Council of the Opposition does not support allowing voters to register at polling stations on election day. The draft law includes no reference to this, but the Parliamentary Majority has proposed allowing voters to register at polls on election day because of the short time for reviewing voter lists before the presidential election.

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